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Minority Rights and Corporate Methods.

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MINORITY RIGHTS

AND

CORPORATE METHODS;

AS ILLUSTRATED IN THE ACTION OF THE TRUSTEE-DIRECTORS AND DIRECTOR-TRUSTEES OF THE ST. PAUL AND DULUTH RAILROAD CO.

BY

"A Mere Anonymous Newspaper Scribbler."

I thank thee, Jew, for teaching me that word.—*Merchant of Venice.*

NEW YORK:
P. F. McBREEN, PRINTER, 61 BEEKMAN STREET.

1886.

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INTRODUCTION.

I have received the power, with blanks below printed, and a very pressing circular letter from Mr. William H. Rhawn, Vice-President of the St. Paul and Duluth Railroad, soliciting my proxy, that he may act for me at the annual meeting of the stockholders of that road, to be held at St. Paul, on the 21st instant. He promises that, in the absence of other instructions, the proxy will be voted in favor of the several propositions unanimously submitted by the Board of Directors.

Know all men by these presents, That I, ... of..... .....do hereby constitute and appoint William H. Rhawn, of Philadelphia; Charles D. Drake, of Washington, ; James J Hill and William H. Fisher, of St. Paul; or any one of them to be my substitute, attorney, and proxy for me and in my name and behalf, to vote, act for, and represent me as a Stockholder, at the Meeting of the Stockholders of the SAINT PAUL AND DULUTH RAILROAD COMPANY, to be held at the office of the Company in St. Paul, on the 21st day of June, 1886, or at any adjournment thereof, as fully and effectually as I might or could do if personally present, hereby ratifying and confirming all lawful acts done in my behalf by virtue hereof. Witness, etc.

The gentlemen named in the power are Directors of the road, and are also Trustees for two classes of stockholders whose rights are respectively defined in the Plan of Reorganization, adopted in 1877. The reasons why I cannot send them my proxy are set forth in the following letters. These letters were originally printed in the *Railroad Record*, of Philadelphia, under the signature of "An Old Subscriber." They were answered as they respectively appeared, by articles in the editorial form, but for the reasons set forth in the eighth chapter herein attributed to one of the important officers of the Company.

In the last of these articles the Trustee-Director assumes a tone of superiority and indulges in intimations and assertions, which I must admit are partially true. It is true that I am a "mere anonymous newspaper scribbler." Jay, Hamilton and Madison published their articles in defence of the Constitution under assumed titles in a village newspaper. I have good authority, therefore, for my mode of appealing to the parties interested, and I have adopted the title thus given me.

It is true, too, that I "seem" to be interested in the common stock. I *am* largely interested in it. The fact may color my views. But it is not true that I have, or ever had, a dollar of speculative interest

in it. I have held some for a long period, and some I have bought since 1884 on the assurance then given by the Directors that they should pay dividends on it at the earliest period possible. I have never sold a share, and never received a dividend.

It is true, too, that I have rung the changes on the capitalization of net earnings, but my authority for this is the repeated assertion of the Directors that they had capitalized nearly a million of net earnings as long ago as 1880, when the road was not earning much of anything.

It is true, too, as the Trustee-Director suggests, that it will be wise for the common stockholders to read over my letters and observe the contradictions in them and my disregard of figures and other things. That they may be enabled to do so, conveniently, I have reprinted them in this pamphlet, just as they were written, only correcting typographical errors and smoothing one or two rough expressions.

It is true, too—I cannot deny it—that the common stockholders should ponder well the question whether I am interested in the prosperity of the road *or* in litigation.

I am deeply interested in the prosperity of the road. I have no interest whatever in litigation, except to pay for it, if it is necessary to have recourse to it. But I cannot for the life of me see why a man may not be honestly interested in both. The question here is not whether the additions recommended by the Board are wise and necessary, but whether a meeting of stockholders by a vote of a majority can take out of a trust fund secured, or intended to be secured, to the common stockholders, the money that is required to pay for these additions; exonerate the Trustees from liability; transfer the fund from Trustees who are subject to strict ACCOUNTABILITY, to the hands of Directors to be used entirely at their *discretion*, and give the preferred stockholders the profits of ownership in addition to the security as mortgagees. That is the question to "ponder."

How the discretion of Directors is sometimes exercised may be learned from a late decision of Judge Wallace. How it is likely to be exercised by the Directors with whom we have to deal may be learned from the menace of the Trustee-Director in his last article in the *Record* that if the helpless minority stockholders undertake to ask Judge Nelson if they have any rights whatever, it will involve them in "costly litigation," with "everything to lose."

I cannot see why asking a simple question in legal form of a Judge ought to be so very costly to the large number of stockholders interested, nor do I see why they should "lose everything" as the penalty of not submitting to the arbitrary will of a majority.

A MERE ANONYMOUS SCRIBBLER.

June 10, 1886.

I.—THE CASE OPENED.

Your article on the St. Paul & Duluth Railroad dividends was read with interest by a great number of New Yorkers. It supplied much information of which they were possessed in a general way, but which your paper made clearer and more specific.

What you say about the interest of the managers in the common stock, and their natural desire to make it pay, is all very well, but it does not exclude the idea that their interest in the preferred stock may be paramount. The preferred stock has a voting power of three to one over the common stock, and such a power means the use of it to the advantage of the preferred, until the common is driven to litigation to secure its equities.

Two things strike me in looking at the reports. Under the application of the stumpage and land revenue to the extinguishment of preferred stock, the preferred stock ought to have diminished in the last five years. It has increased, and the voting power with it, as against that of the common stockholders.

This being so, what is to prevent the preferred stockholders from consummating the transaction you suggest as probable, at their next meeting—to wit, the purchase of preferred stock for cancellation at market prices, instead of at par? A certain seven per cent. stock that could only be retired at the market price, would soon reach 130 or 150. Put such a sinker as that on the common stock and it would never come to the surface.

So imperfect is the knowledge of our Western geography that there are a great many investors of intelligence who are surprised to learn that the railroad known as the St. Paul and Duluth is a straight line between the navigable headwaters of the Mississippi and its tributaries and the

Western headwaters, so to speak, of the chain of great lakes, the St. Lawrence and the Atlantic Ocean. So much of the great West and Northwest as is nearer to Duluth or St. Paul than to Chicago, is tributary to these great cities of the future. What that means in the way of transportation from the West and East to St. Paul, and from St. Paul to the West and East, that must pass *via* Duluth, goes without saying, and explains the immense outlays for enlargement and extension that you say have been called for during the last five years in the interest of the railroad.

The power of the preferred stockholders consists in their excessive vote, by which they can prolong their own rights and infringe on the rights of the common stockholders.

The power of the common stockholders consists in their faculty of retiring the preferred stock at par, without having it increased by the improvident issue of more of the same sort. When the stumpage and land revenue should be applied to the cancellation of preferred stock is *now*. With money worth four per cent., why should the management continue to allow retireable seven per cent. securities to stand between the common stockholders and a dividend?

The future of the St. Paul and Duluth cannot be otherwise than what its *track and termini* promise to make it. There is no railroad line in the country of the same length that suggests such probabilities and prospects. But present stockholders are interested in the present, and want to see some such "management" as will secure them their equitable interests in the property as they go along.

January 25, 1886.

II.—RETIRING PREFERRED STOCK.

Your editorial comments on my letter are fair and reasonable. It is significant that the net earnings of the St. Paul & Duluth for 1885 have not been published. The argumentative statement that has been issued, in lieu thus far of the annual report, does not exclude the idea that when taxes and operating expenses are deducted from the gross earnings there will remain something that is applicable to dividends on the common stock.

Of course "there is a lion in the way." Preferred stockholders with 7 per cent. secured and a vote of three to one will stay so as long as they can. Of that there is no doubt. The difficulty of carrying out the plan settled by the articles of reorganization is two-fold in their view. *First*, The drawing contemplated is so difficult as to be impracticable. *Second*, There is no provision compelling the stockholders to relinquish their shares at par, if so drawn. Let us see:

Twice every year there is an ascertained set of stockholders to whom dividends are to be paid according to their respective interests, evidenced by stock or scrip, Where is the difficulty of representing every such interest by a number, putting all the numbers in a hat or wheel, and drawing out the numbers that are to be paid off at par? None in the world, that I can see.

Then as to compelling these stockholders to acquiesce in what they have agreed to acquiesce in, according to the endorsement on their stock. How do we manage with bondholders. We stop paying the interest; stop paying dividends on the drawn stock, advertising the fact and notifying the holder at the time of paying the dividends for payment of which the books are closed, and he would be as ready as to "acquiesce" as the holder of a bond would be to cash his bond when the interest is stopped.

If this particular mode cannot be followed, any Court of Equity could devise one that will accomplish the purpose.

The intimation that an attempt will be made to set aside the mode of retiring the preferred stock, contemplated by the terms of the reorganization, will probably be sufficient to call attention to the best process for preventing its accomplishment.

Notwithstanding its small vote, the common stock represents rights and equities in the property, not less than those of the preferred. The latter represents mortgage indebtedness. The former represents money paid for the road, materials furnished, interest and floating debt, at the time of reorganization. Only one out of twenty shares of the common stock was issued as a mere representative of the good will or speculative interest in the enterprise. There is not a railroad in the country which so exclusively represents solid cash as does the St. Paul & Duluth. Therefore, the common stock has rights that are bound to be respected and will be protected. Any movement of the preferred stockholders to get *more* than their rights will be resisted.

February 7.

III.—RIGHTS AND REMEDIES.

For your courteous treatment of my communication in your last number, I am much indebted. The very full statement it has elicited editorially, and the legal opinion based upon my previous letter, furnish me with a good part of the information of which I have been in search. Though not as complete in all respects as would be desirable, there is information enough in the article to convince me of the justice of my claims for the common stock.

On the grounds on which the preferred stockholders have divided among themselves nearly a million of preferred stock—to wit, that money applicable to dividends has been used for construction—the common stockholders are clearly entitled to a pro rata distribution of a similar amount among themselves.

On the same grounds precisely, the common stockholders are now entitled to large money dividends from cash on hand, or to a similar satisfaction of their deferred claims to dividends in common stock. If the preferred stock had not possessed three votes to one, the monstrous injustice of dividing the *corpus* of the trust among preferred stockholders and ignoring the rights of the common entirely would have been quite impossible.

To adjust the equitable claims of the common stockholders, you must look not at a single year, but at the results of a series of years.

One word more, but that is unnecessary on my part, in view of the enclosed memorandum which I have this morning received from my legal adviser who has been aided by an expert's analysis of the accounts of the company. I submit only his summing up, which is in the following words:

"Upon one point there can be no difference of opinion. The common stockholders have been sacrificed to the preferred stockholders; while the interests of the one have been protected, the interests of the other have been wholly disregarded. This cannot continue. In an earnest hope that the present directors might be induced to rectify this evil, I have attempted, though feebly, to present the rights of the common stockholders to you because four remedies seemed open to them.

"*First.* An appeal to the justice of the present directors. That appeal is doubtless in vain.

"*Second.* The removal of those directors and the substitution of others who will protect the interests alike of the preferred and common stockholders. This effort to obtain justice will probably be as fruitless as the other—the preferred stockholders having three votes to one of the common stockholders.

"Two remedies remain. One, to proceed against the trustees individually, and make them responsible for the breach of trust which they have clearly committed. The

other, to proceed against them as directors and prevent, by the action of the Court, their further promoting interests of the preferred stockholders at the cost and expense of the common stockholders. Of the adoption and success of both these remedies I have no doubt."

With this, I submit the matter to my brothers in the same predicament.*

March 6.

IV.—INDEMNITY AND DIVIDEND.

You have the advantage of your correspondent in always having the last word, but I am your debtor for courteous treatment.

When the Lake Superior and Mississippi Railroad came to grief in 1874, Elizur Wright, the well known economist and anti-monopolist, wrote several articles in the *Boston Advertiser*, calling on the legislature of Minnesota to liberate the "great trunk artery of her future prosperity from the ring of leeches now fastened to it." He proposed that Minnesota should buy out the railroad bondholders by a 5 per cent. state bond, and resume her forests and her franchises. "Let Minnesota," he said, "own her own forests—she has none too many—and run at least the great arterial thoroughfare which connects her noble river to her nobler lake."

This "great arterial thoroughfare" is what is now known as the St. Paul and Duluth Railroad.

*The suggestion on behalf of the preferred stockholders that they should allow the common stockholders to come in and benefit from the earnings of the St. Paul & Duluth *in future*, on condition of being themselves permitted to remain as perpetual mortgagees, without being retired, as their certificates say they shall be, does not come from the individual known in history as the "Cool of the Evening," but from the other fellow, who was the "Cool of an Arctic Midwinter Midnight."

"Once a mortgage always a mortgage." The mortgage bondholders, now the preferred stockholders, having been paid 7 per cent. from the time it was earned and appropriated a million of preferred stock, are seeking to violate their agreement that the preferred stock shall be retired at par, and insist that it shall not be retired at all. Who was the legal adviser who drew up the agreement that cannot be executed, even with the aid of a Court of Equity?

Minnesota did not buy out the road, but the mortgage bondholders made an arrangement with the income bondholders and the holders of the floating debt, by which they united in an agreement, the object of which was to secure the mortgage bondholders in their interest and repayment of their principal, and ultimately leave the common stockholders in possession of the road and its franchise. The preferred stockholders were allowed a vote of three to one over the common stockholders to secure them in the fulfilment of this agreement.

But now the preferred stockholders find they have cast their lot in such pleasant places that they don't want to leave. This "three to one" gives them an enormous advantage, and it has come to this that they think they had better stay and spend all the money they can get from the road in extending the road, buying real estate, and adding to its property—till they can arrange comfortably for some sort of a deal by which the insiders, or what Mr. Wright called the "ring of leeches," can glut themselves on this "great arterial thoroughfare."

I should hardly have felt justified in drawing these inferences from the policy pursued by the directors, had it not been for the "ambiguous voices" that have been recently heard in Wall street. They say the agreement of 1877 can only be carried out so far as it is for the benefit of the preferred stockholders; but that the moment the fellows that have been wandering for twelve years in the wilderness come in and call for the execution of their part of the agreement, there is no room for them. The "stumpage" has not been applied to retiring the preferred stock, and this is not pretended. A million of preferred stock has been distributed among the "ring of leeches." And now the preferred stock cannot be retired, because there is no way of doing it and no way of compelling a specific performance of the contract. This is what Coke upon Littleton styles "poppycock." In the vernacular it is rot and rubbish.

What the common stockholders are entitled to is what Polk, with much less reason, wanted from the Mexicans, "Indemnity for the past, and security for the future."

Indemnity will consist in an equitable compensation for the dividend money expended on the road and now recouped to the preferred stockholders *only*, and in an equitable recoupment of cash expended and intended to be expended to which the common stockholders *only* are entitled, as the preferred have received theirs in full.

Security will consist in the immediate application of all accrued stumpage money and other earnings to retiring the preferred stock. Any clerk in a lottery office will show how it can be done. If the preferred stockholders wish to avoid this alternative, let them consent to merge the two stocks in one—making common stock of all without any preferred whatever.

This would be a very moderate equivalent for the preferred stockholders to pay for a release from the liability of being retired by the application of stumpage and land receipts and surplus earnings of the road in the purchase of their stock at par.

The interest of the common stockholders is entirely different from that of the preferred stockholders—just as different as the interest of owner and mortgagee. "Three to one" will be of no assistance in the Courts. Justice holds even scales. Where for a series of years one party has derived large benefits from the execution of one part of a contract, the law—not directors' law, nor syndicate law, nor "ring of leeches" law—but the law of the United States Courts—still first-rate law in spite of a lamentable slip or two—will find some mode of executing the other part of the contract, in the interest of the "under dog in the fight."

March 20.

V.—OWNERS AND MORTGAGEES.

I have studied all your communications and editorials in the matter of the St. Paul & Duluth Railroad, and after this shall have nothing more to say. My opinion remains unchanged on most points, though perhaps my early ideas were suggested by my distrust of the average Director. I am inclined to regard many Directors as men who obtain places of trust for the management of other peoples' property, with no other object than to make money by circumventing stockholders and robbing the public, but this is too large a subject to be treated incidentally.

I still think that the preferred stockholders of the St. Paul & Duluth have done with the common stockholders as they would not have been able to do it were not for their three to one vote. I still regard the common stockholders as the owners of the road, subject to the lien of a million of five per cent. bonds, and a little more than five millions of preferred stock liable to retirement at par. I still insist that this retirement can be affected on the terms of the original agreement without the slightest difficulty, and my suspicions of the good faith of the Directors were first aroused by the intimation that the retirement was something "impracticable." It seems to me that the wish was father to the thought.

But whether or not a transaction can be made to put both classes of stockholders on a more desirable footing is an entirely different matter. It is unquestionably within the power of the mortgagees—for so I consider the preferred stockholders—to propose an arrangement to the owners of the road, by which their relations to the property may be changed, and the liability to compulsory redemption at par may be removed from their stock with the consent of the common stockholders. This is now the only obstacle to the preferred stocks reaching the price which an assured seven per cent. stock ought to bring in the market.

You have said that the $820,000 paid in scrip to the preferred stockholders for money laid out on the road, came from them alone, without costing a cent to the common stockholders. Every dollar of it came from the common stockholders, for the preferred have been reimbursed, both in scrip and in the increased value of the road. The common stockholders were entitled to the extinction of preferred stock with that money, which would have diminished that incubus to the full extent of $820,000, but they have not got it. The preferred stock has been increased to that amount, but there is no "talk of turkey" at all to the common stockholders.

All this is to be considered in connection with the suggested re-arrangement of the plan, but what is proposed for the relief of the preferred stockholders is to them a very great boon, a most important and valuable concession from the common stockholders for which the latter ought to receive an equivalent.

A suspension of the liability to be drawn at par, while the preferred stock is over par, is practically an abrogation of the mortgage feature of the preferred stock, and places it in point of permanent ownership on a par with the common stock. What equivalent for this is contemplated? The common stockholders might waive their claims to a distribution of the common stock, in compensation for the award formerly made to the preferred stockholders, but to insure them justice for the future, the voting power of the two stocks ought to be made the same. If the common stockholders allow the preferred, under any circumstances, to divide the surplus that may accrue after the payment of the dividends now provided for, between the two stocks, the two stocks ought to be invested with an equal power for the protection of their rights.

If this part of the business could be arranged on an equitable basis, then a transaction which would apply stumpage and land receipts to the improvement of the road and apply the net earnings of the railroad to ratable divi-

dends on the stocks, might be acceptable to those common stockholders who want current returns for their investments. In some aspects it might be advantageous to such holders as desire only the ultimate exclusive possession of the road by the common stock, but on the whole as far as my own interests are concerned as a common stockholder I should think an arrangement, having regard to the equities I have suggested, might be made which would enure to the benefit of both stocks; but if the preferred stockholders wish to place themselves in the position of common stockholders as owners, they ought in justice to accept the burdens with the benefits. As long as they hold substantially the relation of mortgagees, they are entitled to all the security they can exact from the owners, even to an enormous preponderance of voting power. When they seek to exchange the character of mortgagees for that of owners—why should some owners have three votes and other owners have one vote? There is no good sense and no equity in such an agreement.

April 10.

VI.—TRUSTEES SEEKING TO DEFEAT THEIR TRUST.

It was my original intention in regard to the St. Paul & Duluth Railroad to send my proxy to the gentleman whose views you so clearly represented in your first editorial on this subject. I saw that he had accomplished very great results for the property; results that could have been brought about only by prudent management, judicious improvements, and desirable additions. There are few men who, after eight years' control of a broken down railroad, could render such an account of their stewardship as is given in the article to which I refer in the following words:

"This Company has, since the reorganization in 1877, purchased and paid for an equipment, relaid its main track throughout with steel, rebuilt its bridges, added some fifty miles of side tracks, built and acquired over fifty miles of

branches, acquired a large interest in the Union Depot and grounds at St. Paul, built docks, warehouses and yards at Duluth, and stations, yards and freight houses along its line, more than doubling the actual and productive value of the property, against which but one million dollars bonded debt exists, besides two hundred and ten thousand dollars on one of the branches."

After satisfying myself that these results had really been attained, I thought, naturally enough, that this management is entitled to my confidence; but I must say that my confidence has received a rude shock by the policy foreshadowed in the several elaborate and well-considered articles that have since appeared in your editorial columns. I will tell you why.

In what relation do the Directors of the St. Paul & Duluth stand to the property and to the two classes of stockholders? Besides possessing the ordinary faculties of Directors, they are invested with other powers in the execution of certain special trusts to carry out specific objects recited in the Plan of Reorganization which is the law of their corporate existence. This plan embodies the terms by which all parties interested in the foreclosure of the Lake Superior & Mississippi Railroad agreed to abide; and its objects cannot be more clearly and distinctly stated than in the article representing the views of the management in your excellent journal, in reply to my last letter:

"Why our correspondent should persist in regarding the preferred stockholders as *mortgagees* and the common stockholders as *owners* of the property, is beyond our comprehension. Originally the preferred stockholders represented first mortgage bondholders, and the common stockholders chiefly income bondholders, and neither class of bonds represented ownership; but in the reorganization the holders of *both* acquired ownership, yet the ownership of the preferred stockholders was so paramount and superior to that of the common stockholders that they retained a special and separate lien upon the land grant to *secure their dividends and the final liquidation of their stock, and a vote of three to one, to secure them in control of the company in the meanwhile.*"

It would be difficult to state the duty of the Directors more distinctly or in fewer words. It is so to administer their trust, in the interest of both parties to the "Plan," as to "secure the final liquidation of the preferred stock" and thus by its extinction, invest the common stockholders, as you say in the same article, with "the ultimate ownership" of the property.

This is your own statement of the case for the management, authorized, I assume, by the management.

Because this was the clear intent of the "Plan," I was strictly accurate in assigning to the preferred stock the characteristics and essential features of a mortgage.

The original Directors recognized their obligations to execute this plan in its entirety. They incorporated it in the 1st article of their By-laws of 1877, and declared that the Plan "cannot be changed, altered, amended or repealed in any of its sections except as therein [in the Plan] provided." The 13th article of same By-laws is in the words following: "The foregoing By-laws, *except Article I*, may be amended at any time by the unanimous vote of all the members of the board, or by a two-thirds vote of the members present at any meeting held after due notice of the proposition to amend." The prohibition of change in the 1st article was merely the recognition and expression of the legal operation and effect of the plan. It could not give any additional legal force to the plan, but it is valuable as showing in what light the directory regarded their trust at the outset.

In June, 1881, a revision of the By-laws took place. The 1st article was retained entire, with its declaration of the permanence of the Plan. The 13th article became the 11th, and was made to read as follows: "These By-laws may be altered and amended at any meeting of the Board of Directors by a vote of a majority of all the Members of the Board." But no change was suggested in the 1st article, and none has been made to this day. No change can be made by the Directors, which could lawfully affect the

Plan; nor can it be made by the Stockholders themselves except with the unanimous consent of all the Stockholders at a meeting convened for the purpose, with previous notice of the contemplated alteration.

Consider now the policy of the Trustees, as developed by themselves. On the 23d of January, the management intimated in the RECORD, that when the net receipts of the railroad could pay the dividends on the preferred stock, the land receipts would "have to be applied to the purchase and cancellation of preferred stock." But, as the drawing at par would "seem to be impracticable with stock" it was not unlikely that the Stockholders would at the next or some future meeting "authorize the purchase of preferred stock for cancellation at market prices."

The next suggestion of the Trustees was a little bolder. They expressed a desire to have it "generally known" that the provisions for drawing are so defective as to be impracticable, "and that there is no provision compelling shareholders to relinquish their shares if drawn." Notice that this objection comes not from the stockholders but from the Trustees.

Experimentally and tentatively, a short time after, the management say in the most guileless manner: "Indeed, why should not the stockholders agree that after the 7 per cent. is paid on the preferred stock, the same shall also be paid on the common stock when earned, any excess of income after that, to be divided equally between the two stocks."

At length the Director-Trustees by their own much repetition of the alleged "impracticability" and "defects" of the "Plan," persuaded themselves that they could convert the property to their own use permanently by changing their By-Laws and bringing to bear on the situation the three to one vote of the preferred stockholders. They then dictated a new "Plan" involving, if adopted, the following results:

I. That the three-to-one vote of the preferred stock shall be made perpetual.

II. Payment of 6 per cent. on the common stock for the *next* fiscal year, if earned, and 7 per cent. thereafter.

III. Division of surplus between the two stocks, without making any allowance to common stockholders for earnings hitherto applied to additions and improvements.

IV. Confirmation by all the stockholders of the over issue of preferred stock, and the re-issue of cancelled preferred stock, neither of which, if void by law, (*as both are supposed to be*), can be made valid by such confirmation.

V. The continuation of the Trust for an indefinite period in the hands of directors who declare its execution impracticable, and insolently advise the common stockholders "to possess their souls in patience," as they "may consider it a settled fact" that the Trust *will not be executed.*

VI. If the common stockholders will consent to change the "Plan" in compliance wtth the dictation of the Trustees, they will have a dividend "right under their nose"—in the *next* (as usual) fiscal year.

VII. If the common stockholders will not consent to change the "Plan," the Trustees will spend all the earnings in additions and improvements and relegate dividends into the "dim and distant future" and this they will do in defiance of the vote of the stockholders in 1884—that such earnings shall be applied to cash dividends instead of being applied to additions and improvements; and in breach of the assurance given in the annual report of the Directors in December, 1884, that after the 30th of June, 1885, the *net earnings of the road* after paying the dividends on the preferred stock "will be applied in payment of dividends on the common stock as provided in the Plan of Reorganization."

Now I will admit without hesitation that if the St. Paul & Duluth was the personal property of the Trustees, they would be entitled to the highest praise for their management of it. But as a *Trust*, their present relation to it deserves unsparing condemnation.

If the Plan is honestly carried out and the preferred stock is duly liquidated, the common stockholders will come into possession of the property within a term that is variously estimated, with no incumbrance except a one million five per cent. mortgage. The Trustees say that the preferred stock will be extinguished at the rate of about 3 per cent. a year. The same Trustees say that the receipts of the road are increasing in a geometrical progression, and there is already accrued a large stumpage fund that is legally applicable to the as yet unperformed trust of extinguishing the preferred stock. The writer of a recent instructive letter to the common stockholders, thinks that the Company can pay the six per cent. dividend on the common stock regularly and extinguish the preferred in about ten years. A Pittsburg correspondent of C. D. Barney & Co., who has been endorsed by the Trustees and yourself, and whose communication you published as a valuable contribution to the discussion—thinks that the time when the common stock would acquire the property "would not be so far distant as many might suppose." From what I know of the road and its possibilities, I am satisfied that it is the obvious interest of the common stockholders to insist on the execution of the Plan, and refuse to be either wheedled or coerced into an abandonment of it, and this, whether it takes five or fifteen years to liquidate the preferred stock.

The interests of the common stockholders are entirely different from those of the preferred. Wherein the antagonism lies must be apparent to all who read this paper. It is the interest and the expressed intention of the Directors, to thwart and defeat the honest execution of their Trust. It is the interest of some--but not of all the preferred Stockholders that they should succeed in this purpose. It is the interest of the Common Stockholders that they should fail in it. If the Directors are to withhold from the Common Stock the cash dividend which has been earned, as well as the stock dividend to which you admit they may be justly entitled, and are to persist in the determination

not to execute their Trust, the Common Stockholders should forthwith come together and mark out a course to be pursued for the assertion of their rights under the Plan of Reorganization.

April 30.

VII.—TRUSTEES MENACE THEIR BENEFICIARIES.

It seems that there has been at last a real meeting of the "Board"—the first since your articles began to appear—though it was my impression that all the Directors are covered by one hat, and that the "Board" holds its meetings daily, all the year round. If this is not so, I have been misinformed.

I see that the threats made in your last article of an "indefinite postponement of dividends" on the common stock have been "materialized" in the action of the Board, submitting propositions for the consideration of the annual meeting of stockholders, the adoption of which would transfer the whole property to the beneficial use of the preferred stockholders, for a period without limit. If stockholders can do what the Board proposes, they can consign common stock and common stockholders, together, to a very dim and distant future.

It is well, perhaps, that the Board has published this programme at so early a period, as it gives the common stockholders ample time for consultation and co-operation before the meeting. It is well, too, that this declaration of war to the knife has been made in such pronounced and emphatic terms, as it gives fair warning to the "inferior class" that their only chance for any equitable show in the matter is by a prompt and combined appeal to the courts. Though I regard this pronunciamento, like the premature closing of the books, as one of the stock-jobbing tricks by which the preferred and common shares have been manipulated for the last four or five years to the great profit of the insiders; still the

game it foreshadows will no doubt be attempted at the stockholders' meeting, and in the absence of judicial interference may be apparently successful. I say *apparently*, because the preferred stockholders can do nothing outside of the Articles of Association without the unanimous consent of the common stockholders. This, of course, the latter will never give to any scheme for their own injury.

It is my deliberate opinion that such an audacious avowal of the intention to strip stockholders of the beneficial use of their property could only have been possible at a period of epidemic lawlessness like the present. The method of accomplishing the lawless purpose is supposed to be found in the preponderant vote of the preferred stockholders, authorizing vague and indefinite expenditures that may easily absorb many millions of dollars, enuring solely to the benefit of the preferred stock, and in a very definite unlimited postponement of dividends to the common stockholders if they can be unanimously frightened or frozen into an acquiesence in the admissions and concessions involved in this insidious scheme.

I am aware that the temptation is very great. It is, of course, hard to lose the grasp on such a valuable property as this "great arterial thoroughfare." Given the people and the products, and the line between the two head-water points of the Mississippi and the lakes, is something more than what the line between New York and Boston would be to-day if the Sound were dammed up, and the sea route *via* Cape Cod were indefinitely protracted. The vast future traffic between Duluth and St. Paul and Minneapolis must all go overland. As the great Northwest fills up—it is not to be wondered at that something like "geometrical progression" is visible in the business of the road. To retain this important property in the hands of the preferred stockholders is well worth a struggle. But it is not worth the sacrifice of truth, contract, law and justice. With good grace or with bad grace the preferred stockholders must accept the law of their being and submit to the inevitable.

"Liquidation" is what they bargained for, and secured, and "liquidation" is printed on every certificate that represents their interest. "Ultimate ownership" is what the common stockholders bargained for and secured by an agreement as clear and conclusive as the English language is capable of making it. The preferred stockholders may, by ingenious chicaneries, stave off for awhile the evil day, but they must come to it at last. Whether it is a longer or shorter time is a question for the common stockholders to decide by placing their interests under the protection of the courts. The court would be called upon to say—and in view of the vote of stockholders and the printed promises of the Directors two years ago—whether the directors with half a million of cash in their treasury, applicable to dividends on the common stock, can convert it into capital by the building of new lines, the acquisition of terminal real estate and the erection of new buildings, and throw the whole expense of the new erections on the common stockholders without giving them one farthing of compensation. Not only are the preferred stockholders doing this now, but they have the sublime impudence to announce to the common stockholders that they intend to do it for an indefinite period.

As having an important bearing on more than one point in this controversy, I would respectfully call the attention of the Board to what a very eminent Lord Chancellor has recently said on the very question now before us: "If things which are properly capital have been paid for out of revenue," said Lord Hatherly, on appeal in a leading case in equity, familiar to the profession, "I have no hesitation in saying that the circumstance that [the Directors] had been paying what ought to be charged to capital out of revenue, does not prevent their right or their duty to the persons who are looking for their payment out of revenue to credit back to revenue those things which have been carried for the time to capital account; and, if necessary to recoup the revenue account, they might raise fresh capital under their borrowing powers for that purpose."

Now, after robbing the revenue account of the common stockholders for years, till, as they boast, they have more than *doubled* the intrinsic value of the capital stock, and more than *trebled* the revenue, the Board advise the preferred stockholders to use their three-to-one vote for the ill-disguised purpose of indefinitely postponing dividends on the common stock, and the conversion of accrued and accruing cash applicable to such dividends into capital stock. And this proposition emanates—Heaven save the mark !—from a Board of Trustees. One might imagine it possible—hardly possible, perhaps—in a Board of Aldermen.

And yet how unnecessary this indefinite postponement is, supposing it could be accomplished, we may learn from the programme which the representative of the Board—if not the actual Board—recently put forth in your columns. In this programme the Board say that this capital stock, to whose use they now propose to sequestrate the dividends of the common stock, may be created in various modes : First, by the issue of bonds, (or recourse to the borrowing power by which they must recoup the revenue account when it is taken for capital). Second, by dividends to common stockholders in stock (for their money thus diverted to capital). Third, by discontinuing the purchase of preferred stock on which an interest of 7 per cent. is paid when money is worth 4 per cent). Fourth, by sale at par and upwards of common stock in the treasury, which they say will reach par on the payment of the first dividend (as it no doubt will, being with an honest administration of the Trust more valuable than the preferred stock).

With such resources, as explained by the managers themselves, how disingenuous it is to talk of indefinite "postponement" of dividends on the common stock as a necessary condition of applying all the money that can be lawfully applied to such uses to the increase of the undivided capital stock alone.

The policy of indefinite postponement foreshadowed in

your columns, is on the principle of the "tie up"—the "strike"—or the "boycott," or of any unlawful conspiracy by which men undertake to promote their own interest at the expense of interests that are not of so "paramount and superior" a nature as they imagine their own to be. It must be handled in the same way. It is neither a complicated nor an expensive arrangement for the common stockholders to assert and secure their rights. An injunction against the vote on unauthorized over-issued or reissued stock would be one step that would probably be advised. Stopping the payment of dividends on such stock would be another. The diversion to capital stock of money applicable to dividends—past and present—would call for an account and recoupment. The appointment of a Receiver to execute the Trust which the Directors refuse or neglect to execute would be an obvious remedy to which the common stockholders are entitled. All the processes are open to them by which the specific performance of contracts can be enforced in courts of justice. All the instances in which the Trustees have violated their duty to the injury and loss of the common stockholders are open to inquiry and correction.

One result of an appeal to the courts would be to put a stop to the gambling in the common stock that has prevailed in former years, and to the attempt to give a fictitious value to the preferred stock on the pretense that the contract printed on every certificate can be made impracticable. It would quiet the threat of robbing the common stockholders by turning their dividends indefinitely into capital stock on which the preferred stock could realize dividends forever. All this rubbish could be cleared away by one decided movement in behalf of the common stock, and it would not require much of a syndicate to put the common stock on its legs and secure for it, at a day by no means "remote," "indefinite," "dim" or "distant," the ultimate "ownership," which is admitted to be the object of the Articles of Association, or the unchangeable Plan of Reorganization.

The Trustees have already capitalized more than two

millions of receipts applicable to the payment of dividends. They have compensated the preferred stockholders for this appropriation by an over-issue of preferred stock, and a re-issue of cancelled stock to the amount of nearly a million of dollars. As the preferred stockholders have received full dividends, the second million, at all events, could only have come from the common stockholders. The burthen of this capitalization of dividends indeed falls on the common stockholders alone, who receive no compensation but are saddled with nearly a million of 7 per cent. stock, not authorized by law or by the Plan of Reorganization. And now the preferred stockholders, after promising a dividend in 1884 decline to pay one for 1886, but say they will pay one "hereafter," laying out at the same time work to be paid for from earnings that would make a dividend for years impossible.

These gentlemen cannot be trusted to pay "hereafter" because they have not acted in good faith "hitherto"—because they have broken their promises—and because on the most frivolous pretenses they repudiate a solemn contract after availing themselves of its extreme interpretation in their favor for a series of years. The only relief of the common stockholders must be sought in the courts. There is no disposition evinced by the Trustees to execute their Trust; on the contrary, they express with scandalous frankness the determination to evade and betray it.

May 20.

VIII.—THE CASE SUMMED UP.

It is in no discourtesy, Mr. Editor, that I must persist in regarding your comments on my letters as proceeding from an important officer of the Company and a member of the Board of Trustees. It is no part of an editor's province to take cognizance of such matters as have been discussed in your articles. You do not propose to run on your per-

sonal say-so all the railroads in that great Northwest to whose interests your esteemed journal is devoted. You surely cannot undertake to adjudicate on the rights of two bodies of stockholders, common and preferred, and advise them how their Articles of Association are to be interpreted, how much of these articles can be executed, and how much of them is impracticable; and while purporting to speak in behalf of both classes of stockholders decide always in favor of the policy of one class represented by the Board of Trustees. Nor can you well presume to mark out the financial policy of all the railroads that intersect the large domain which you claim as your special bailwick, and dictate to them as to what additions and extensions are desirable, and where they are to get the money to pay for them. You would hardly feel at liberty on your own motion to approach any class of stockholders with the menace that they must abandon their rights under their charter, or give up all hope of receiving from the Board of Directors any dividend whatever from the net earnings of the Road for an indefinite period. You would hardly tell them that the Trust of the Board could not be executed, and that it was settled that the Board would not execute it without the cancellation of its most important provisions, and change in its most essential features; you would hardly venture to tell them all this, because as a stranger you would have no excuse or apology for doing so, and your readers would regard it as an unwarrantable interference with matters that do not concern you. All this, however, might do well enough for a Director. The average Director has a deep sense of what he owes to his family, and too often becomes a manager of other peoples' property for the money he can make out of it for himself. The trust is to be executed primarily in his own interest, secondarily in his own interest. and thirdly in his own interest—all the time. So I regard your speculations on all these topics as speculations of a Trustee-Director.

While holding these opinions, I frankly admit that it is

in my own interest entirely that I contend for the rights of the common stockholders. Of the preferred stock I keep only one share that I may have the contract of the parties to the "Plan" convenient for reference. What I have to say therefore is addressed not only to the holders exclusively of common stock, but to those holders of common stock who are also holders of the preferred. This controversy with the Trustees I have conducted entirely in my own interest as I interpret it, and at my own charges, with no possible opportunity of profiting by litigation otherwise than as a stockholder, with no desire to impair the rights of the preferred stockholders, or to array one class of stockholder against another, but with an inflexible determination to ascertain whether the common stockholders, under the articles from which the preferred stockholders derive *all* their rights, have *any* legal rights whatever, or whether they are entirely at the mercy of a Board of Directors who have from the start assumed that they could do precisely what they pleased with the property for the peculiar advantage of the preferred stockholders without the slightest regard or reference to the duties imposed upon them by the Plan, or the rights secured by the Plan to the common stockholders.

One other observation on your last article. I not only believe half of what I have said in my letters, but I believe firmly every word of it. As to taking the Directors into Court, I think it would have been a very proper thing for the common stockholders to have done long ago—to get from them an amicable explanation of the reasons why they had not confined their action to the line of duty prescribed by their fundamental law. I think it a very proper thing to do now, if justice can be obtained in no other way, and for my own part, I have no desire to incite others to do what I am unwilling to do myself. Another thing the Trustees may depend upon, and that is, that when the common stockholders go into Court, *they will not allow the defendants to frame their bill of complaint.* If the Board could frame both bill and answer, they might well

warn the common stockholders to beware of litigation, and ask triumphantly, "What sort of a case is this to take into Court?" The Trustees have gone on as if they were the owners of the property, representing rights "so paramount and superior" to those of the common stockholders that the latter really retain no rights at all. They have done what they pleased as Directors, whether within or without the Plan. Then they have organized themselves as stockholders and confirmed their action as Directors—and by their preponderant vote of three to one have borne down all opposition, whether their action was lawful or unlawful. They now propose at the next stockholders' meeting to confirm what they have done *without* the authority of the Plan, as well as what they have done within it.

With regard to the additions, improvements and extensions that the Trustee-Director deems advisable and necessary to the extent of at least half a million of dollars, and some of which he thinks the State would demand to keep the road in a condition to accommodate the public—I will not discuss the necessity of these improvements. Supposing them to be necessary for the prosperity of the road, they ought to be made—but at whose expense? At the expense, of course, of *all* the stockholders, either by borrowing money or by an equal assessment on all the stock. How is it proposed to pay for them? By throwing the whole expense on the common stockholders alone. Hence it is that an experienced and long established (1870) financial journal, the *Financial Daily Record*, published in New York, an expert in railroad matters, and in the interest of the Board, says in its issue of May 27th, in regard to the resolutions which the Board offer to the stockholders: "The effect of the passage of the above will be to defer indefinitely all prospect of dividends upon the common stock * *. The resolutions will undoubtedly pass—for the preferred stock has a vote for every share, while it requires three shares of the common to cast a single vote." Stick the proverbial pin right here. In view of this interpretation

of the resolutions by a competent and disinterested judge, of what value are the pretences of the Directors that they are not "detrimental" to the common stockholder? I should say that they were in the highest degree detrimental.

Before proceeding to consider the preamble and resolutions referred to, let me call the particular attention of the common stockholders to the propositions originally formulated by the Director-Trustee, who has figured so extensively in your columns. The first proposition was to authorize the purchase of preferred stock for cancellation at *market prices*. The Directors felt pulses on that, and found it would never answer. The second proposition was that the drawing was impracticable, and that the preferred stockholders could repudiate the contract printed on their certificate. This was so preposterous that the Directors did not dare to submit it to the stockholders; they knew it would be considered frivolous, to say the least. Next was thrown out the proposition for altering the By-Laws and repealing the first article, which declared the "Plan" unchangeable. In view of the Minnesota statutes they found out that this would be a dangerous matter. Driven from all these positions, and satisfied that they could not be maintained in any manner as *direct* propositions, the Directors determined to try the same thing by indirection.

Now, in the light of these defeated propositions, showing the *motives* of the Board, let us examine, one by one, each clause of the Preamble and Resolutions recommended by the Board, which I have numbered for convenient reference:

I.—"WHEREAS, In order to enable this Company more efficiently to "meet competition and the steadily increasing demands of business, "it is, in the judgment of this Board, desirable that a temporary "change should be made in the application of the *net income of the* "*Company*, as said application is prescribed in the 'Plan of Sale, "Purchase and Reorganization,' finally effected June 27, 1877, "and that the change should be such as not to be *detrimental to* "*either class* of the stock of the Company; and—

Let it be borne in mind that after the payment of seven per cent. to the holders of the preferred or mortgage stock,

the "net income" belongs entirely to the common stockholders, every dollar of it: first, to pay them six per cent. in cash, and then for retiring (in their interest) the preferred stock. It is no doubt extremely "desirable" for the preferred stockholders to ignore the usual methods of raising money for construction, which would fall on the Company, and to throw the entire burden on the common stockholders. There is nothing considered more desirable by some people, than to throw an expense that belongs to themselves on to somebody else; I should not attribute such a wish to the preferred stockholders, but I ask is this "desirable" for the common stockholders, or is it "detrimental" to their interests? And if this is really to be a "temporary" change only, why not make it so by fixing some sort of limitation?

II.—"WHEREAS, It appears that *not less than half a million* dollars "will be needed to make the improvements suggested in the annual "report of the Board for the year 1885, and which are, in the "Board's opinion, highly important for the interests of the Com-"pany; therefore,

It appears, then, that at least half a million of the "net income" is to be taken from the uses of the common stockholders, because a "Board," in whose election the common stockholders have no voice whatever, consider it "important for the interests of the Company." If it is important for the Company to make the improvements, let the Company pay for them. But these improvements are to cost "at least" half a million—they may be made to cost just as much more as a Board, which the common stockholders do not elect, see fit to make them cost. There is, practically, no limit whatever, except the elastic conscience of the Board. Now, is the unlimited application of their own "net income" to the uses of the Company, "detrimental" to the common stockholders, or otherwise?

III.—"*Resolved*, That at the meeting of the stockholders of this "Company, to be held on the 21st of the ensuing month of June, "the stockholders be requested to vote on the adoption of the fol-"lowing changes in said 'Plan of Sale, Purchase and Reorganiza-"tion,' of which notice shall be given in newspapers in St. Paul, "New York and Philadelphia, to wit;

Changes are to be proposed in an unchangeable "Plan" which is a contract between two parties, one of which has no influence in electing the Board that advises them, or any potential voice in the meeting of stockholders. That is, one party to the contract is to say whether or not it is "detrimental" to the other party. What a handy thing that would be for the "one party" to be able to do. On this it is only necessary to direct attention to the following positive averment of an eminent equity judge: "No resolution of the Company *qua* Company, could *possibly* amount to a resolution which would, *in the slightest degree*, vary the rights of the shareholders of the different stocks." That will do for the present on this head. The law was laid down by Sir William Page Wood, vice-chancellor in another case, but it is just as applicable to our purpose as if it was laid down by Judge Nelson himself in this very matter.

IV.—"*First.*—The Board of Directors shall have authority to suspend "the purchase or drawing of preferred stock, and to apply the net pro- "ceeds from stumpage and the sale of the lands, not required in pay- "ing dividends upon preferred stock, to such improvements, addi- "tions and betterments of and to the road and its equipment, as "*they shall deem necessary* for the full and efficient operation of "the road."

The judges of the "necessity" in this case are the Board representing preferred stockholders only, for the common are practically disfranchised. Now, if there had been any desire to make a resolution on this subject that would not be "detrimental" to their interests, such a one as the above would never have been offered, to be forced on the common stockholders by the three-to-one vote of the preferred. Why did the Board, after making in the first "Whereas," marked I, a disposition of the entire "net income" of the Company for new construction, in this first resolution, marked IV, make provision for dividends on preferred stock ONLY, without alluding to any dividend whatever for the common stock?

After securing 7 per cent. to the preferred stockholders, all the net income of the Company, for an indefinite period,

is thus applied to additions and extensions not in any sense contemplated by the "Plan." The Trustee Directors have it in their power, if they can pass such a resolution legally, to postpone dividends on the common stock forever, and to bury it, not under hills merely, but under mountains.

V.—"*Second.*—The Board shall also have power to increase the dividends upon the common stock to seven (7) per cent. whenever the net earnings of the railroad shall be found to warrant it."

This is positively insulting. Without ever having paid a dollar on the common stock, without ever having retired a dollar of the preferred stock by purchase, and after appropriating all the "net income" to additions and improvements, limited only by the discretion of a Board in which the common stockholders are virtually unrepresented, the Board are to have the "power" to increase the cash dividends of the common stockholders to 7 per cent. whenever the "net earnings of the railroad shall be found to warrant it." "Found" by whom? And found where, after the "net income" of the Company has been applied without limitation of time or amount, to the uses of the Company? Would it not have been more to the point, and more of an inducement to the common stockholder, if the Board had insured him the six per cent. contemplated by the "Plan" instead of deluding him by a nominal increase of his dividend, after appropriating all the funds, that absolutely belong to him alone, to the general uses of the Company?

VI.—"*Third*—Any surplus of net earnings of the railroad, which may remain after paying a dividend of seven (7) per cent. upon preferred stock and a like dividend upon the common stock, *shall be divided equally upon the two classes of stock.*

Certainly. *Now*, the common stockholders are entitled to the beneficial use of *all* the surplus net income from all sources. It is proposed to take away from them for the future all the stumpage and land receipts, and apply all the net income from all sources to the uses of the Company, at the arbitrary discretion of the Board elected by preferred stockholders. If they will consent to that, and

to changing the *status* of the preferred stockholders from mortgagees to owners—(for a right to "suspend" the obligation of a contract involves, of course, a right to repeal it altogether) then the Directors will allow them, when they see fit, *one-half* of certain proceeds to *the whole* of which they are entitled under the existing "Plan." And now for the climax :

VII.—"*Fourth—Such suspension of the application of the net income "shall continue only so long as it may be needed to accomplish the "necessary improvements, additions and betterments.*"

Now we come back to the "net income" we started with. The whole "net income" from all sources is given to the Board to expend for what they may consider "necessary," for an unlimited period—taking absolutely from the common stockholders for that unlimited period all the benefits to which they are entitled by their contract—without giving them, I will not say an equivalent, but without insuring them one dollar of *compensation.*

And all these propositions come from Trustees—who are supposed to be elected for the "protection" of their wards, but though unquestionably not so intended, this really seems to be only "such protection as vultures give to lambs."

If, after making yourself familiar with this analysis of these propositions, clause by clause, you will read carefully through the whole series of preambles and resolutions, you will not find a single sentence that contemplates or promises one dollar to the common stockholders—sooner or later—from now to the great final reckoning. They deliver the common stockholders, bound hand and foot, to the arbitrary will of a Direction in which they have not a single Director; a Direction that withholds from them money to which they are lawfully entitled, and that has never applied one dollar of the net income hitherto to the purchase or drawing of preferred stock contemplated by the Plan of Reorganization. Suspension, forsooth. How can the Directors *suspend* what they have never begun ?